

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DOUGLAS MAY,

Plaintiff,

v.

Case No. 10-CV-13560

WAL-MART STORES, INC.,

Defendant.

**OPINION AND ORDER DENYING PLAINTIFF'S APPLICATION FOR LEAVE TO
APPEAL *IN FORMA PAUPERIS***

Before the court is Plaintiff Douglas May's application for leave to appeal *in forma pauperis*. Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district court action who desires to appeal *in forma pauperis* must file a motion in the district court. "The decision to grant or deny an application to proceed [*in forma pauperis*] lies within the sound discretion of the district court." *Benson v. Carlton*, No. 00-5040, 2000 WL 1648054, *1 (6th Cir. Oct. 26, 2000). An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). "Good faith" requires a showing that the issues raised are not frivolous. *Foster v. Ludwick*, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002).

Plaintiff's original complaint alleged four causes of action, all of which were dismissed. The first two, alleging "Wrongful Termination" and "Breach of Contract" centered on Plaintiff's assertion that he was fired "without cause." Defendant alleged Plaintiff was an "at will employee" and therefore as a matter of law could be terminated

for any reason at any time. Plaintiff's summary judgment response brief did not address these claims, and he thus waived any opposition to Defendant's argument. The remaining two causes of action alleged "Employment Discrimination - Disparate Treatment" and "Employment Discrimination - Criminal Record." To succeed on these claims, Plaintiff must first prove he is a member of a protected class. See *Smith v. City of Salem, Ohio*, 378 F.3d 566, 570 (6th Cir. 2004). Sex offenders are not a protected class. See, eg., *Levine v. Walmart Stores Inc.*, No. 4:08-CV-114, 2008 WL 203658, *2 (M.D. Pa. Jan. 23, 2008); *Cantrell v. Beebe*, No. 2:09-CV-184, 2010 WL 2232221, *2 (E.D. Ark. June 2, 2010). Plaintiff's discrimination claims were not actionable absent any allegation of discrimination due to membership in a protected class. The court therefore granted summary judgment to Defendant.

Plaintiff now seeks to appeal the court's decision, but he has failed to state the issues he intends to present on appeal. Federal Rule of Appellate Procedure 24(a)(1)(C) mandates that an application to proceed *in forma pauperis* contain an affidavit which "states the issues that the party intends to present on appeal."

Fundamentally, Plaintiff entire complaint rests on the proposition that Defendant could not fire him for being a registered sex offender. Fundamentally, the court disagrees. As Plaintiff presents no nonfrivolous issues for appeal, the court must conclude his appeal is not taken in good faith. Accordingly,

IT IS ORDERED that Plaintiff's application for leave to appeal *in forma pauperis* [Dkt. # 44] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 5, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 11, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522